

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

RONNIE J. NIXON

PLAINTIFF

v.

No: 3:18-cv-00181 KGB-PSH

SUSAN COX, *et al.*

DEFENDANTS

ORDER

Plaintiff Ronnie J. Nixon filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 on September 24, 2018. Doc. No. 1. On September 26, 2018, the Court entered an order directing Nixon to submit the full \$400.00 filing and administrative fees or file a fully completed and signed IFP application within 30 days. Doc. No. 2. Nixon's mail was returned as undeliverable. Doc. No. 3. On October 9, 2018, the Court ordered Nixon to update his address within 30 days. *See* Doc. No. 4. Mail sent to Nixon continued to be returned as undeliverable. *See* Doc. Nos. 5-7. After more than 30 days had passed, and Nixon had not complied or otherwise responded to the September 26 or October 9 orders, the Court entered a Recommended Disposition recommending that the case be dismissed for failure to comply with Local Rule 5.5(c)(2) and for failure to respond to the Court's orders. *See* Doc. No. 8.

On December 13, 2018, Nixon filed a notice that indicates he is still in the Poinsett County Detention Center. Doc. No. 9. Accordingly, the Court withdraws its Recommended Disposition entered on November 14, 2018. To proceed with this case, Nixon must file an amended complaint within 30 days confirming that he is still incarcerated in the Poinsett County Detention Center. Additionally, because Nixon is a "three-striker" under the three-strikes provision of the Prison

Litigation Reform Act (“PLRA”), he must either pay the full filing fee or show that he was in danger of imminent serious physical injury when he filed this lawsuit, as explained below.

The following cases filed by Nixon were dismissed for failure to state a claim: *Nixon v. Mills, et al.*, No. 3:10-cv-00012-BSM; *Nixon v. Cox*, 3:17-cv-00122-BRW; *Nixon v. Hitt, et al.*, No. 3:17-cv-00138-JM. The PLRA’s three-strikes provision states that a prisoner cannot proceed *in forma pauperis* in a civil action if:

the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, ***unless the prisoner is under imminent danger of serious physical injury.***

28 U.S.C. § 1915(g) (emphasis added). The U.S. Court of Appeals for the Eighth Circuit has explicitly upheld the constitutionality of the three-strikes provision. *See Higgins v. Carpenter*, 258 F.3d 797 (8th Cir. 2001). As a three-striker, Nixon must show that he was in imminent danger of serious physical injury at the time he filed the complaint. 28 U.S.C. § 1915(g); *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998). The Eighth Circuit has clarified that the imminent danger exception applies only when there is a genuine risk of an “ongoing serious physical injury.” *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003).

To proceed with this lawsuit, Nixon must pay the \$400.00 filing and administrative fees or return a completed *in forma pauperis* (“IFP”) application, including an accompanying calculation sheet and certificate signed by an authorized official, within 30 days of the date of this order. The Clerk of Court is directed to enclose an IFP application along with a copy of this order. If Nixon files an IFP application, the Court will need more information to determine if Nixon’s claims meet the imminent-danger exception to the PLRA’s three-strikes rule. Nixon alleges that jail officials did not give him his medication. Doc. No. 1 at 4-5. He does not describe what medical condition(s)

he has or the medication required to treat such conditions. Accordingly, if Nixon intends to proceed IFP, Nixon must amend his complaint within thirty days from the date of this Order to describe why he believes he is currently in danger of imminent serious physical injury. The Court directs the Clerk of Court to send Nixon a blank § 1983 form.

In the event Nixon fails to comply with this Order within thirty days, the Court will recommend this case be dismissed.

SO ORDERED this 13th day of December, 2018.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line and a small flourish.

UNITED STATES MAGISTRATE JUDGE